



State of Louisiana
DIVISION OF ADMINISTRATION

OFFICE OF STATE UNIFORM PAYROLL

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OFFICE OF STATE UNIFORM PAYROLL MEMORANDUM #2008-10

TO: All ISIS HR Agencies

FROM: Jena W. Cary
Director

SUBJECT: Nonqualified Deferred Compensation

Section 409A of the Internal Revenue Code, created with the passage of the American Jobs Creation Act of 2004, provides regulations governing the taxability and reporting requirements of Nonqualified Deferred Compensation. Nonqualified Deferred Compensation (NQDC) is earnings that an employee earns in one year but that are paid in a later year. In order to be considered NQDC, the employee must be offered a choice of pay plans and elect to receive payment over an extended period. An example of this is a teacher who works over a 9-month school year but elects to receive compensation over an extended period of 10, 11 or 12 months. If the agency does not offer a choice of pay plans, then the pay plan is not considered NQDC, regardless of the payment period, and the employee election and agency plan/policy documents are not required.

Agencies that offer the employee a choice of pay plans must meet the following requirements.

- **By January 1, 2008**, the agency must document in writing how employees are to be paid for compensation earned for the rest of the 2008 work period or school year. The agency is responsible for maintaining this documentation in their files.
- **Prior to the beginning of the 2008-2009 work period or school year**, the agency must write a policy describing the various pay plans offered, how they will collect elections, set deadlines for the election and how they will handle employees who do not submit elections.
- The employee must give a written (or electronic) election to the agency notifying the agency that the employee wants to spread out their compensation over an extended period (10, 11 or 12 months).
- The election must be made before the beginning of the work period (for example, before the first day of the school year for which the employee is paid, which may be before the first day students arrive for class). A new election is not required for subsequent years if an arrangement is made providing that a pre-existing election will remain in place until the employee elects a change.
- An employee's election is **irrevocable** with respect to that work period or school year. This information must be conveyed to the employee.
- The election must state how the compensation is going to be paid if the election is made (for example, over the 12 months starting with the beginning of the school year).
- No particular form is necessary for the election, and it does not have to be filed with the IRS.
- The agency and/or employee may be subject to tax penalties if all the requirements of §409A are not met.

Questions regarding this issue should be directed to a member of the OSUP Compliance and Research Unit at _DOA-OSUP-COMP@LA.GOV or (225):

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